

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EASTMAN KODAK COMPANY,

Plaintiff,

v.

ALTEK CORPORATION,

Defendant.

Civil Action No. 12-cv-0246-DLC

**DECLARATION OF JULIETTE CHAN IN SUPPORT OF ALTEK CORPORATION'S
OPPOSITION TO EASTMAN KODAK COMPANY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I, Juliette Chan, declare:

1. I make this declaration in support of Defendant Altek Corporation's Opposition to Eastman Kodak Company's Motion for Partial Summary Judgment. Except as indicated herein, I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would competently thereto.

2. I am Altek Corporation's General Counsel. I have held this position since 2010.

3. In April 2010, Kodak hired KPMG to audit Altek. During this audit, Altek provided KPMG with "retail price" data to use for determining "open market price" for cameras Altek manufactured for customers other than Kodak. Neither KPMG nor Kodak objected when Altek provided "retail prices" for the audit.

4. During the audit, the main disagreement between the parties was whether it was correct to use an average "retail price" for determining "open market price," or an individual "retail price." The parties discussed this issue at length. Attached hereto as **Exhibit 1** is a true and correct copy of an August 9, 2010 communication between Altek and KPMG, as produced by Altek with Bates numbers ALTK00000397-403 and designated as Confidential pursuant to the Protective Order.

. Attached hereto as **Exhibit 2** is a true and correct copy of a September 1, 2010 communication between KPMG and Altek, as produced by Altek with Bates numbers ALTK00000338-47 and designated as Confidential pursuant to the Protective Order.

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5. When I discussed "average selling price" with Kodak and KPMG, I was referring to an average "retail price." I understood that the "retail price" would be used to determine the

“open market price.” Neither Kodak nor KPMG conveyed to Altek during the audit that the use of “retail price” data in calculating royalties to Kodak was incorrect. During the audit, and in response to the “retail sales” data provided by Altek, KPMG told Altek that they “have found discrepancies, contradictory information and lack of support for certain model numbers claimed under this exception [Section 4.14]. We have discussed with third-party vendors the availability of open market pricing data for the models in question.” See Exhibit 1. Kodak and KPMG then recommended that Altek purchase the “retail price” data for from vendors, Gesellschaft für Konsumforschung (“GfK”) and the NPD Group (“NPD”).

6. With regards to all of its own customers, Altek has always retained its own sales prices for all models of cameras it manufactures them. Altek would not need to contact a third party to collection such information. To my knowledge GfK and NPD do not have data on the prices at which Altek sells cameras to its own customers.

7. Attached hereto as **Exhibit 3**, is a true and correct copy of a January 31, 2011 communication between Kodak’s counsel, Michael Summersgill and Altek, as produced by Kodak with Bates number KOD-ATK00003738-3739, and designated as Confidential pursuant to the Protective Order.

8. Attached hereto as **Exhibit 4**, is a true and correct copy of a April 21, 2011 communication between Altek and Kodak’s counsel, Michael Summersgill, as produced by Altek with Bates number ALTK000001801, and designated as Confidential pursuant to the Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Taiwan, this 15th day of February, 2013.

By: 
JULIETTE CHAN